

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1182(n) and subparts H and I of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) In addition to back wages and civil money penalties, the Administrator may impose such other administrative remedy(ies) under this subpart as the Administrator deems appropriate.

(d) The civil money penalties, back wages, and/or any other remedy(ies) determined by the Administrator to be appropriate are immediately due for payment or performance upon the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. Distribution of back wages shall be administered in accordance with existing procedures established by the Administrator.

**§ 655.815 Written notice and service of Administrator's determination.**

(a) The Administrator's determination, issued pursuant to § 655.805 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by cer-

tified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § 655.805 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an employer, prescribe any remedies, including the amount of any back wages assessed, the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies assessed.

(2) Inform the interested parties that they may request a hearing pursuant to § 655.820 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of labor (upon whom copies of the request must be served).

(5) Inform the parties that, pursuant to § 655.855 of this part, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the employer.

**§ 655.820 Request for hearing.**

(a) Any interested party desiring to request an administrative hearing in accordance with section 556 of title 5, United States Code, on a determination issued pursuant to §§ 655.805 and 655.815 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an employer has committed violation(s). In such a proceeding, the party requesting the hearing shall be the prosecuting party and the employer shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has committed violation(s). In such a proceeding, the Administrator shall be the prosecuting party and the employer shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the notice of determination giving rise to such request;
- (4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;
- (5) Be signed by the party making the request or by an authorized representative of such party; and
- (6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination. An interested party which fails to meet this 15-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge, either through intervention as a party pursuant to 29 CFR 18.10 (b) through (d) or through participation as an *amicus curiae* pursuant to 29 CFR 18.12.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier

service. For the requesting party's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

**§ 655.825 Rules of practice for administrative law judge proceedings.**

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

**§ 655.830 Service and computation of time.**

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.